

ELC 6.5
DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel and the respondent lawyer negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Required Terms. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel;

(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;

(3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disputes. Except as specifically authorized by the Rules for Enforcement of Lawyer Conduct, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract."

(4) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel;

(5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred;

(6) include a specific acknowledgement that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel; and

(7) include a specific acknowledgement that the diversion contract and the supporting affidavit or declaration under ELC 6.6 are subject to release under ELC 3.3.

(c) Limitations. A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties, or liabilities outside of those stated in the diversion contract or provided by Title 6 of these rules.

(d) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel.

[Adopted effective October 1, 2002; Amended effective January 1, 2014; January 2, 2018.]